UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/285,559	04/02/99	HECHEL	D 3216/75036

QM12/1031

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EXAMINER	
QADERI,R	
ART UNIT	PAPER NUMBER
3737	10

DATE MAILED: 10/31/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action	Application No. 09/285,559	Applicant(s) HECHEL ET AL.	
	Examiner Runa S. Qaderi	Art Unit 3737	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10/1/01 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☐ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-18*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive. In response to the applicant's arguments on page 3 through the middle of page 4 and on page 6 3rd paragraph continued to page 7, applicant is reminded of the use of the transitional term "comprising" , "which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps", MPEP 2111.03. The system and method of Watmough et al. includes a skin temperature detecting means that changes color during ultrasound therapy. The skin temperature detecting means is a liquid crystal device. As stated in the previous office actions liquid crystal change color only at a predetermined temperature. Color change explicity implies a visual change. Therefore Watmough et al clearly taeches a system and method of detecting skin temperature via a color (visual) change only at a predetermined temperature during ultrasound therapy. Futher Chervitz reference is introduced to the invention of Watmough et al.simply to provide the means for securing the temperature sensing visual indicator of Watmough et al. on the skin during ultrasound therapy.

In response to the applicants' argument on page 9, last paragraph, about mean-plus-function lauguage of claim 1, Watmough et al. clearly teaches the ultrasound applying means to include an ultrasound power source and an ultrasound transducer as disclosed in applicant's specification. Further claim 1 discloses means adapted to be disposed on the portion for providing a color change only at a predetermined temperature. The color changing means is supported by a thermal or thermochromatic indicator in the applicant's specification. The liquid cystal device of Watmough et al. is clearly a thermochromatic indicator. Finally adhesive backing mechanism of Chertiz provides the secring means of claim 1.

In response to the arguments on page 4 last paragraph and page 8 through 9, applicant's arguments are not directed to the claimed subject matter. Applicant's intepretation of claims is more narrow than what is actually disclosed. It is noted that the features upon which applicant relies on in these arguments are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Watmough et al. clearly teaches a skin temperature detector that changes color at a predetermined temperature during an ultrasound treatment. Watmough et al. does not teach the adhesive backing to secure the detector on the surface on the skin. Chervitz teaches an adhesive backing to secure for a skin temperature detector. It would have been obvious for a person of ordinary skill in the art to incorporate the adhesive backing of Chervitz to secure the liquid crystal device to the surface of the skin during ultrasound therapy of Watmough et al. because adhesive backing is a well known means to secure a temperature device on the surface of the skin.

Applicant aserts on page 7 "As would be clear to a person of skill in the art, the combination of Watmough et al. in view of Chervitz teaches of devices that provide visual indications at a number of predetermined temperatures. As such, the combination does not teach or suggest 'an indicator adapted to provide change only at the predetermined temperature'". The claim langauge does not preclude from altering it at more than one predetermined temperature.

Claims 1-11 are rejected under 35 USC 103(a) as being unpatentable over Watmough et al. in view of Chervitz.
Claims 12-17 are rejected under 35 USC 103(a) as being unpatentable over Watmough et al. in view of Chervitz as applied to claims 1-11 above, and further in view of Cohen.
Claim 18 is rejected under 35 USC 103(a) as being unpatentable over Watmough et al. in view of Chervitz as applied to claims 1-11 above, and further in view of Behnke et al.

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